

AMENDED IN ASSEMBLY MAY 16, 2000
AMENDED IN ASSEMBLY APRIL 25, 2000
AMENDED IN ASSEMBLY APRIL 10, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 1889

Introduced by Assembly Member Cedillo

February 10, 2000

An act to add Chapter 6 (commencing with Section 16645) to Part 2 of Division 4 of Title 2 of the Government Code, relating to use of state funds.

LEGISLATIVE COUNSEL'S DIGEST

AB 1889, as amended, Cedillo. State funds: unionization.

Nothing in existing law prohibits recipients of state funds from using the funds to discourage unionization.

This bill would prohibit a state contractor from assisting, promoting, or deterring union organizing, as defined, and would prohibit state funds from being used to reimburse those activities. The bill would also prohibit a grant recipient, state contractor, public employer, or private employer who receives state funds and meets other requirements from using state funds to assist, promote, or deter union organizing. The bill would prohibit an employer who conducts business on state property pursuant to a contract or concession agreement with the state or a state agency to use the state property to hold a meeting with any employees or supervisors if the purpose of the meeting is to assist, promote, or deter union

organizing. The bill would impose civil penalties for a violation of the above provisions.

The bill would require specified recipients of state funds to comply with certification and recordkeeping requirements relating to the use of state funds. The bill would provide that it does not apply to an expenditure made prior to January 1, 2001, or to a grant or contract awarded prior to January 1, 2001, except as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares the
2 following:

3 It is the policy of the state not to interfere with an
4 employee's choice about whether to join or to be
5 represented by a labor union. For this reason, the state
6 should not subsidize efforts by an employer to assist,
7 promote, or deter union organizing. It is the intent of the
8 Legislature in enacting this act to prohibit an employer
9 from using state funds and facilities for the purpose of
10 influencing employees to support or oppose unionization
11 and to prohibit an employer from seeking to influence
12 employees to support or oppose unionization while those
13 employees are performing work on a state contract.

14 SEC. 2. Chapter 6 (commencing with Section 16645)
15 is added to Part 2 of Division 4 of Title 2 of the
16 Government Code, to read:

17
18 CHAPTER 6. PROHIBITION ON USE OF STATE FUNDS AND
19 FACILITIES TO ASSIST, PROMOTE, OR DETER UNION
20 ORGANIZING
21

22 16645. For purposes of this chapter, the following
23 terms have the following meanings:

24 (a) "Assist, promote, or deter union organizing"
25 means any attempt by an employer to influence the
26 decision of its employees or those of its subcontractors
27 regarding either of the following:

1 (1) Whether to support or oppose a labor organization
2 that represents or seeks to represent those employees.

3 (2) Whether to become a member of any labor
4 organization.

5 (b) “Employer” means any individual, corporation,
6 unincorporated association, partnership, government
7 agency or body, or other legal entity that employs more
8 than one person in the state.

9 (c) “State contractor” means any employer that
10 receives state funds for supplying goods or services
11 pursuant to a written contract with the state or any of its
12 agencies.

13 (d) “State funds” means any money drawn from the
14 State Treasury or any special or trust fund of the state.

15 (e) “State property” means any property or facility
16 owned or leased by the state or any state agency.

17 16645.1. (a) No state funds shall be used to reimburse
18 a state contractor for any costs incurred to assist, promote,
19 or deter union organizing.

20 (b) Every request for reimbursement from state funds
21 by a state contractor shall include a certification that the
22 contractor is not seeking reimbursement for costs
23 incurred to assist, promote, or deter union organizing. A
24 state contractor that incurs costs to assist, promote, or
25 deter union organizing shall maintain records sufficient
26 to show that no reimbursement from state funds has been
27 sought for those costs. The state contractor shall provide
28 those records to the Attorney General upon request.

29 (c) A state contractor is liable to the state for the
30 amount of any funds obtained in violation of subdivision
31 (a) plus a civil penalty equal to twice the amount of those
32 funds.

33 (d) This section does not apply to a fixed-price
34 contract or to any other arrangement by which the
35 amount of the payment of state funds does not depend on
36 the costs incurred by the state contractor.

37 16645.2. (a) The recipient of a grant of state funds,
38 including state funds disbursed as a grant by a public
39 agency, shall not use the funds to assist, promote, or deter
40 union organizing.

1 (b) For purposes of this section, each recipient of a
2 grant of state funds shall account for those funds as
3 follows:

4 (1) State funds designated by the grantor for use for a
5 specific expenditure of the recipient shall be accounted
6 for as allocated to that expenditure.

7 (2) State funds that are not designated as described in
8 paragraph (1) shall be allocated on a pro rata basis to all
9 expenditures by the recipient that support the program
10 for which the grant is made.

11 (c) Prior to the disbursement of a grant of state funds,
12 the recipient shall provide a certification to the state that
13 none of the funds will be used to assist, promote, or deter
14 union organizing. Any recipient that makes expenditures
15 to assist, promote, or deter union organizing shall
16 maintain records sufficient to show that state funds have
17 not been used for those expenditures. The grant recipient
18 shall provide those records to the Attorney General upon
19 request.

20 (d) A grant recipient is liable to the state for the
21 amount of any funds expended in violation of subdivision
22 (a) plus a civil penalty equal to twice the amount of those
23 funds.

24 16645.3. (a) No state contractor shall assist, promote,
25 or deter union organizing by employees who are
26 performing work on a service contract, including a public
27 works contract, for the state or a state agency.

28 (b) A state contractor that violates subdivision (a) is
29 liable for a civil penalty of one thousand dollars (\$1,000)
30 per employee per violation.

31 16645.4. (a) A state contractor that receives state
32 funds in excess of ten thousand dollars (\$10,000) pursuant
33 to a contract with the state or a state agency shall not use
34 those state funds to assist, promote, or deter union
35 organizing.

36 (b) All contracts in excess of ten thousand dollars
37 (\$10,000) and that are awarded by the state or a state
38 agency shall contain the prohibition stated in subdivision
39 (a).

1 (c) A state contractor who is subject to subdivision (a)
2 and who makes expenditures to assist, promote, or deter
3 union organizing shall maintain records sufficient to show
4 that no state funds were used for those expenditures. The
5 state contractor shall provide those records to the
6 Attorney General upon request.

7 (d) A state contractor is liable to the state for the
8 amount of any funds expended made in violation of
9 subdivision (a) plus a civil penalty equal to twice the
10 amount of those funds.

11 16645.5. (a) An employer conducting business on
12 state property pursuant to a contract or concession
13 agreement with the state or a state agency, or a
14 subcontractor on such a contract or agreement, shall not
15 use state property to hold a meeting with any employees
16 or supervisors if the purpose of the meeting is to assist,
17 promote, or deter union organizing. This section does not
18 apply if the state property is equally available, without
19 charge, to the general public for holding a meeting.

20 (b) An employer that violates subdivision (a) shall be
21 liable to the state for a civil penalty equal to one thousand
22 dollars (\$1,000) per employee per meeting.

23 16645.6. (a) A public employer receiving state funds
24 shall not use any of those funds to assist, promote, or deter
25 union organizing.

26 (b) Any public official who authorizes the use of state
27 funds in violation of subdivision (a) shall be liable to the
28 state for the amount of those funds.

29 16645.7. (a) A private employer receiving state funds
30 in excess of ten thousand dollars (\$10,000) in any calendar
31 year on account of its participation in a state program
32 shall not use any of those funds to assist, promote, or deter
33 union organizing.

34 (b) As a condition of participating in a state program
35 pursuant to which it will receive state funds in excess of
36 ten thousand dollars (\$10,000) in any calendar year, a
37 private employer shall provide a certification to the state
38 that none of those funds will be used to assist, promote, or
39 deter union organizing.

(c) A private employer who is subject to subdivision (a) and who makes expenditures to assist, promote, or deter union organizing shall maintain records sufficient to show that no state funds were used for those expenditures. The private employer shall provide those records to the Attorney General upon request.

(d) A private employer is liable to the state for any funds expended in violation of subdivision (a) plus a civil penalty equal to twice the amount of those funds.

16645.8. (a) A civil action for a violation of this chapter may be brought by the Attorney General, or by any state taxpayer, on behalf of the people of the State of California, for injunctive relief, damages, civil penalties, and other appropriate equitable relief. All damages and civil penalties collected pursuant to this chapter shall be paid to the State Treasury.

(b) Before filing an action under this section, a taxpayer shall give written notice to the Attorney General of the alleged violation and the intent to bring suit. If the Attorney General commences a civil action for the same alleged violation within 60 days of receiving the notice, a separate action by the taxpayer shall be barred.

(c) A taxpayer may intervene as a plaintiff in any action brought under this section.

(d) A prevailing plaintiff in any action under this section is entitled to recover reasonable attorney's fees and costs. A prevailing taxpayer intervenor who makes a substantial contribution to an action under this section is entitled to recover reasonable attorney's fees and costs.

16646. (a) For purposes of this chapter, any expense, including legal and consulting fees and salaries of supervisors and employees, incurred for research for, or preparation, planning, or coordination of, or carrying out, an activity to assist, promote, or deter union organizing shall be treated as paid or incurred for that activity.

(b) For purposes of accounting for expenditures, if state funds and other funds are commingled, any expenditures to assist, promote, or deter union organizing shall be allocated between state funds and other funds on a pro rata basis.

1 16647. This chapter does not apply to an activity
2 performed, or to an expense incurred, in connection with
3 any of the following:

4 (a) Addressing a grievance or negotiating or
5 administering a collective bargaining agreement.

6 (b) Allowing a labor organization or its
7 representatives access to the employer's facilities or
8 property.

9 (c) Performing an activity required by federal or state
10 law or by a collective bargaining agreement.

11 (d) Negotiating, entering into, or carrying out a
12 voluntary recognition agreement with a labor
13 organization.

14 16648. This chapter does not apply to an expenditure
15 made prior to January 1, 2001, or to a grant or contract
16 awarded prior to January 1, 2001, unless the grant or
17 contract is modified, extended, or renewed after January
18 1, 2001.

19 *16649. The provisions of this chapter are severable. If*
20 *any section or portion of this chapter, or any application*
21 *thereof, is held invalid, in whole or in part, that invalidity*
22 *shall not effect any other section, portion, or application*
23 *that can be given effect.*